

229057



CONEJOS COUNTY
CLEAN WATER INC.

March 29, 2011

Surface Transportation Board

395 E. Street, SW

Washington, DC 20423

Attn: Letter to the Editor

RE: Update to Public Comment in FD35380

To the Members of the Surface Transportation Board:

Please accept this as an update to the public comment submitted by Conejos County Clean Water, Inc. The enclosed settlement was approved in federal court in Denver today, resolving the litigation between Conejos County Clean Water, Inc, et al. and the U.S. Department of Energy.

We again reiterate that the proposed transfer site is not authorized for use at the federal level. With the enclosed settlement filed in court we request that the Board dismiss the declaratory order proceedings since the site is not approved for use at the federal level and will require a public National Environmental Policy Act (NEPA) analysis prior to any such use. The settlement obligates the DOE to perform a full NEPA analysis with local public involvement prior to DOE shipping any more waste from Los Alamos National Laboratory (LANL) through Antonito. As a result, use of the site at this time is purely speculative and such speculative use should not form the basis of a formal ruling by the STB.

Sincerely,

Mary Alice Trujillo

Chair, Conejos County Clean Water, Inc.

Enclosures (4)

Conejos County Clean Water Inc.
P.O. Box 153
Antonito, CO 81120
www.conejoscountycleanwater.org

I do hereby certify that I have electronically served, John D Heffner, SL&RG attorney, and Keith T. Borman, American Short Line and Regional Railroad Association General Counsel.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 10-cv-02663-JLK

CONEJOS COUNTY CLEAN WATER, INC.; SAN LUIS VALLEY ECOSYSTEM
COUNCIL; CONCERNED CITIZENS FOR NUCLEAR SAFETY,

Plaintiffs,

v.

U.S. DEPARTMENT OF ENERGY; NATIONAL NUCLEAR SECURITY
ADMINISTRATION; THOMAS P. D'AGOSTINO, in his official capacity as Administrator of
the National Nuclear Security Administration; STEVEN CHU, in his official capacity as
Secretary of the Department of Energy;

Defendants.

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JOINT MOTION TO DISMISS

Plaintiffs and Defendants in the above-captioned case, by and through their attorneys,
hereby jointly move this Court for an order dismissing the complaint with prejudice. The reasons
for this motion are as follows:

1. Plaintiffs and Defendants have agreed to settle this dispute upon the terms set forth in the attached Stipulated Settlement Agreement (attached as Exhibit A).
2. Plaintiffs and Defendants request that the Court issue an order dismissing this action with prejudice pursuant to Fed. R. Civ. P. 41(a)(2), provided that the Court incorporates the terms and conditions of their agreement into its order and retains jurisdiction over this matter, if necessary, solely to enforce the terms of the attached Settlement Agreement. See Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375 (1994).

For the foregoing reasons, Plaintiffs and Defendants jointly move the Court for an order dismissing Plaintiffs' complaint with prejudice.

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Attorneys for Plaintiffs

EXHIBIT A

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ADMINISTRATION; THOMAS P. D'AGOSTINO, in his official capacity as Administrator of
the National Nuclear Security Administration; STEVEN CHU, in his official capacity as
Secretary of the Department of Energy;

Defendants.

SETTLEMENT AGREEMENT

The parties to this action, by and through their undersigned counsel of record, hereby agree to the following Settlement Agreement in order to resolve this action informally, solely as a compromise, and to avoid the need for further litigation before the Court:

1. The Department of Energy ("DOE") and the National Nuclear Security Administration ("NNSA") are not currently proposing to utilize the San Luis & Rio Grande Railroad ("SL&RG") truck to rail transfer point ("transfer point") located near the town of Antonito in Conejos County, Colorado, for the shipment of any waste materials resulting from the environmental restoration and clean-up of certain areas of the Los Alamos National Laboratory pursuant to the March 1, 2005, Order on Consent ("Consent Order") between DOE, Los Alamos National Security, LLC, the New Mexico Environment Department and the University of California, to the EnergySolutions disposal facility in Clive, Utah.

2. If, in the future, DOE or NNSA proposes to use the transfer point for the shipment of such wastes, DOE or NNSA agree to complete an environmental analysis

(excluding use of a Categorical Exclusion) pursuant to the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 to 4370(f), consistent with all applicable regulations prior to authorizing such shipments. Any such analysis will include public notice and opportunity to comment.

3. Defendants agree to pay to the Plaintiffs the sum of \$5,850 in full satisfaction of any and all claims for attorneys' fees, costs, and other expenses related to this action.

4. Defendants' payment, as identified in Paragraph 3 above, shall be accomplished by electronic fund transfer to the COLTAF account of Energy Minerals Law Center. Plaintiffs' attorneys shall provide the appropriate account number and other information needed to facilitate payment to the undersigned counsel for Defendants.

5. Plaintiffs' attorneys are receiving funds in trust for Plaintiffs, and Plaintiffs agree to this procedure. Plaintiffs and their attorneys agree to hold harmless Defendants in any litigation, further suit, or claim arising from the payment of the agreed-upon \$5,850 settlement amount pursuant to Paragraph 4.

6. Plaintiffs agree that the Court may enter the accompanying proposed order dismissing this case with prejudice.

7. The Parties agree that the Court may retain jurisdiction over this matter solely to enforce the terms of this Settlement Agreement. See Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375 (1994). In the event of a disagreement between the Parties concerning any aspect of this Settlement Agreement and its implementation, the Parties shall make a good faith effort to confer and resolve the dispute out of court. If the Parties are unable to resolve the dispute, then either party may file a motion to enforce the terms of the Agreement. The Parties agree that contempt of court is not an available remedy for any violation of this Agreement, and the parties therefore knowingly waive any right that they might have to seek an order of contempt for any such violation.

8. The Parties agree that the Court's retention of jurisdiction does not extend to any dispute over the adequacy of any NEPA analysis prepared consistent with Paragraph 2.

Any challenge to an analysis prepared consistent with Paragraph 2 must be brought through a new judicial action. In entering this agreement, neither party waives any argument it may have challenging or defending any such analysis.

9. The Parties agree that this agreement shall terminate upon issuance of a NEPA analysis consistent with Paragraph 2 or upon completion of all off-site transportation of wastes pursuant to the March 1, 2005, Consent Order.

10. The Parties agree that nothing in this agreement alters the rights or responsibilities of any party to the March 1, 2005, Consent Order.

11. This agreement is the result of compromise and settlement and does not represent an admission by any party to any fact, claim, or defense in any issue in this lawsuit. This agreement has no precedential value and shall not be cited in any other litigation except as necessary to enforce the terms of the agreement.

12. No provision of this stipulation shall be interpreted as or constitute a commitment or requirement that Defendants obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable appropriations law.

13. Nothing in the terms of this agreement shall be construed to limit or deny the power of a federal official to promulgate or amend regulations.

14. The undersigned representatives of the Parties certify that they are fully authorized by the respective Parties whom they represent to enter into the terms and conditions of this agreement and to legally bind such Parties to it.

15. This agreement represents the entirety of the Parties' commitments with regard to settlement. The terms of this agreement shall become effective upon entry by the Court of the accompanying order of dismissal.

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